

## § 233.60

## 45 CFR Ch. II (10–1–97 Edition)

assistance, the State plan for AFDC must as specified below:

(1) Provide that an appropriate State agency will certify that support and maintenance assistance is based on need (as defined in paragraph (b) of this section), and that such certification will be accepted for purposes of determining eligibility for and the amount of payments under the AFDC program.

(2) Provide that in joint AFDC/SSI households, support and maintenance assistance furnished to the household which is not excluded under this paragraph will be prorated on a reasonable basis to determine the amount provided to the AFDC assistance unit. The State plan must describe the method that will be used to prorate the assistance in these circumstances.

(3) Provide that the types and amount of support and maintenance assistance that are excluded when received by an AFDC applicant or recipient will also be excluded in determining the income and resources of a parent, stepparent, spouse or alien sponsor whose income is considered available to an AFDC applicant or recipient.

(4) Provide that the State may exclude, from income and resources, support and maintenance assistance (as defined in paragraph (b) of this section) which the appropriate State agency certifies is based on need, if the assistance is furnished by:

(i) A supplier of home heating gas or oil, regardless of whether the assistance is in cash or in kind; or

(ii) A municipal utility providing home energy, regardless of whether the assistance is in cash or in kind; or

(iii) A rate-of-return entity which provides home energy, regardless of whether the assistance is in cash or in kind; or

(iv) A private nonprofit organization, but only if such assistance is in kind.

(5) Provide that, if the State elects to exclude from income and resources any support and maintenance assistance, the State plan must:

(i) Describe the criteria that will be used to determine the need for the assistance;

(ii) Identify the types and amounts of assistance which will be excluded; and

(iii) Provide that any limitations will be made on a reasonable basis.

[51 FR 39533, Oct. 29, 1986, as amended at 56 FR 64204, Dec. 9, 1991]

### § 233.60 Institutional status.

(a) *Federal financial participation.* (1) Federal financial participation under title I, X, XIV, or XVI of the Social Security Act is not available in payments to or in behalf of any individual who is an inmate of a public institution except as a patient in a medical institution.

(2)(i) Federal financial participation under title X or XIV of the Social Security Act is not available in payments to or in behalf of any individual who is a patient in an institution for tuberculosis or mental diseases.

(ii) Federal financial participation under title XVI of the Social Security Act is not available in payments to or in behalf of any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases.

(3) For purposes of this paragraph:

(i) Federal financial participation is available in payments for the month in which an individual (if otherwise eligible) became an inmate of a public institution, or a patient in an institution for tuberculosis or mental diseases;

(ii) Whether an institution is one for tuberculosis or mental diseases will be determined by whether its overall character is that of a facility established and maintained primarily for the care and treatment of individuals with tuberculosis or mental diseases (whether or not it is licensed);

(iii) An institution for the mentally retarded is not an institution for mental diseases;

(iv) An individual on conditional release or convalescent leave from an institution for mental diseases is not considered to be a patient in such institution.

(b) *Definitions.* For purposes of Federal financial participation under paragraph (a) of this section:

(1) “Institution” means an establishment which furnishes (in single or multiple facilities) food and shelter to four or more persons unrelated to the proprietor, and in addition, provides some treatment or services which meet some

need beyond the basic provision of food and shelter.

(2) "In an institution" refers to an individual who is admitted to participate in the living arrangements and to receive treatment or services provided there which are appropriate to his requirements.

(3) "Public institution" means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

(4) "Inmate of a public institution" means a person who is living in a public institution. An individual is not considered an inmate when:

(i) He is in a public educational or vocational training institution, for purposes of securing education or vocational training, or

(ii) He is in a public institution for a temporary emergent period pending other arrangements appropriate to his needs.

(5) "Medical institution" means an institution which:

(i) Is organized to provide medical care, including nursing and convalescent care;

(ii) Has the necessary professional personnel, equipment, and facilities to manage the medical, nursing, and other health needs of patients on a continuing basis in accordance with accepted standards;

(iii) Is authorized under State law to provide medical care;

(iv) Is staffed by professional personnel who have clear and definite responsibility to the institution in the provision of professional medical and nursing services including adequate and continual medical care and supervision by a physician; sufficient registered nurse or licensed practical nurse supervision and services and nurse aid services to meet nursing care needs; and appropriate guidance by a physician(s) on the professional aspects of operating the facility.

(6) "Institution for tuberculosis" means an institution which is primarily engaged in providing diagnosis, treatment, or care of persons with tuberculosis, including medical attention, nursing care, and related services.

(7) "Institution for mental diseases" means an institution which is pri-

marily engaged in providing diagnosis, treatment or care of persons with mental diseases, including medical attention, nursing care, and related services.

(8) "Patient" means an individual who is in need of and receiving professional services directed by a licensed practitioner of the healing arts toward maintenance, improvement, or protection of health, or alleviation of illness, disability, or pain.

[36 FR 3867, Feb. 27, 1971]

#### § 233.70 Blindness.

(a) *State plan requirements.* A State plan under title X or XVI of the Social Security Act must:

(1) Contain a definition of blindness in terms of ophthalmic measurement. The following definition is recommended: An individual is considered blind if he has central visual acuity of 20/200 or less in the better eye with correcting glasses or a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance of no greater than 20°.

(2) Provide, in any instance in which a determination is to be made whether an individual is blind or continues to be blind as defined under the State plan, that there will be an initial examination or re-examination performed by either a physician skilled in the diseases of the eye or by an optometrist, whichever the individual so selects.

(i) No examination is necessary when both eyes are missing.

(ii) Where an initial eye examination or re-examination is necessary, the physician or optometrist conducting such examination will submit to the State agency a report thereof, on such forms and in such manner, as may be prescribed for such purpose. A determination whether the individual meets the State's definition of blindness under the State plan will be based upon a review of such eye examination report as provided for in paragraph (a)(3) of this section, and other information or additional examination reports as the State deems necessary.

(3) Provide that each initial eye examination report and any subsequent re-examination report will be reviewed